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**IN THE
COURT OF APPEALS OF INDIANA**

NICK C. BIGSBY,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 29A02-0610-PC-843
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE HAMILTON CIRCUIT COURT
The Honorable Judith S. Proffitt, Judge
Cause No. 29C01-9609-DF-233

May 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Nick C. Bigsby appeals the denial of his petition for post-conviction relief contending that the trial court erred in determining that he was not entitled to credit time for the days he was “held” pursuant to a Hamilton County arrest warrant for a probation violation, while simultaneously being detained in the Marion County Jail awaiting trial on unrelated charges.¹

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 13, 2003, the Hamilton Circuit Court sentenced Bigsby, in connection with his guilty plea for Class D felony theft,² to 180 days executed and 847 days suspended to probation. *Appellant’s App.* at 3. Approximately nine months later, the State filed a notice of probation violation in Hamilton Circuit Court, in part based on Bigsby’s arrest in Marion County on charges of burglary and theft. The Hamilton Circuit Court issued an arrest warrant for Bigsby on November 17, 2003, “which apparently acted as a hold on him until his Marion County matters were resolved.”³ *Appellee’s Br.* at 2.

On August 23, 2005, while on probation for his Hamilton County conviction, Bigsby pled guilty in Marion Circuit Court to theft as a Class D felony and was sentenced to two years in prison. *Appellant’s App.* at 45. The Marion Circuit Court granted Bigsby 317 days

¹ While Bigsby was not physically detained by the Hamilton County arrest warrant, the warrant acted as a hold on him until the Marion County charges were resolved. *Appellee’s Br.* at 12

² See IC 35-43-4-2.

³ When the Hamilton Circuit Court issued the November 17, 2003 arrest warrant, Bigsby had already served 180 days in prison and approximately 128 days on probation. Pursuant to IC 35-38-2-3(c), the issuance of a summons or warrant tolls the period of probation until the final determination of the charge. As such, having served 128 days of his 847-day probation, Bigsby had approximately 719 days of probation remaining.

of credit for his pre-trial detention. *Id.* at 46. On November 2, 2005, while still on probation for his Hamilton County conviction, Bigsby pled guilty to an unrelated Class D felony theft in Marion County and was sentenced to two years, with one year executed and one year suspended to probation. *Id.* at 50-54. The Marion Circuit Court granted Bigsby seventy-six days of credit for his pre-trial detention. *Id.* at 54.

On February 6, 2006, Bigsby was returned to the Hamilton County Jail for a hearing on the notice of probation violation filed in 2003. During the evidentiary hearing, Bigsby admitted that he had violated terms of his probation, but argued that he should get credit for the 393 (317 plus 76) days that he had been detained in Marion County awaiting trial on the two unrelated offenses and concurrently on “hold” in this case. *Probation Revocation Tr.* at 3-9. The Hamilton Circuit Court revoked Bigsby’s probation, denied his request for credit time, and ordered him to serve 545 days in the Department of Correction.⁴

On February 14, 2006, Bigsby filed a motion to correct erroneous sentence. One week later, the trial court issued an order denying Bigsby’s claim for the 393 days of credit. Bigsby filed a pro se notice of appeal and, on July 21, 2006, Bigsby filed a petition for post-conviction relief. The Hamilton Circuit Court denied Bigsby’s petition, and he now appeals.

DISCUSSION AND DECISION

A petition for post conviction relief is the proper vehicle for the review of credit time determinations when immediate release is not the relief sought. *McGee v. State*, 790 N.E.2d 1067, 1069 (Ind. Ct. App. 2003), *trans. denied*. In order to obtain post-conviction relief,

⁴ As noted in the previous footnote, because the probation had tolled when the warrant was issued, Bigsby could have been facing a sentence of almost 719 days. *See* IC 35-38-2-3.

Bigsby must establish his claims by a preponderance of the evidence. *Peace v. State*, 736 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), *trans. denied* (2001). Because the post-conviction court was unpersuaded as to the merits of Bigsby's claims, Bigsby must convince us that the evidence leads unmistakably to reversal. *Id.* We consider only the evidence that supports the post-conviction court's decision along with any reasonable inferences from that evidence. *Id.*

Bigsby contends that, because the Hamilton County arrest warrant placed a hold on him while he was also being held in the Marion County Jail awaiting trial for unrelated charges, he is entitled to credit time in his Hamilton County case for the 393 days he spent in the Marion County Jail. Indiana inmates imprisoned awaiting trial or sentencing earn Class I credit. *State v. Eckhardt*, 687 N.E.2d 374, 376 (Ind. Ct. App. 1997). IC 35-50-6-3(a) provides, "A person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing." IC 35-50-6-3(a). "[P]re-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion." *Weaver v. State*, 725 N.E.2d 945, 948 (Ind. Ct. App. 2000).

Bigsby's statutory right to credit time is not unlimited, however. As we stated in *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*,

It is well-settled that where a person incarcerated awaiting trial on more than one charge is sentenced to concurrent terms for the separate crimes, IC 35-50-6-3 entitles him to receive credit time applied against each separate term. However, where he receives consecutive terms he is only allowed credit time against the total or aggregate of the terms.

The Marion County crimes were committed while Bigsby was on probation for the Hamilton County theft; therefore, the sentences had to run consecutively to each other. *See* IC 35-50-1-2.⁵ Bigsby was given credit for pre-trial detention for each of the Marion County convictions. A defendant sentenced to consecutive terms may receive credit only against the aggregate sentence. *Peace*, 736 N.E.2d at 1267; *Stephens*, 735 N.E.2d at 284. That is what the trial court correctly ordered in this case.

Nevertheless, Bigsby relies on our court’s decision in *Muff v. State*, 647 N.E.2d 681 (Ind. Ct. App. 1995), *trans. denied*, in which we allowed double credit time in a consecutive sentence context. This reliance, however, is misplaced. Our court has noted, “to the extent that *Muff* permits credit for time served against each separate sentence rather than against the aggregate of the consecutive sentences, thereby resulting in double credit, we decline to follow it, and conclude that *Corn* [*v. State*, 659 N.E.2d 554, 558-59 (Ind. 1995)] impliedly overruled it.” *Stephens*, 735 N.E.2d at 284-85; *see Diedrich v. State*, 744 N.E.2d 1004, 1006 (Ind. Ct. App. 2001).

The post-conviction court did not err by denying Bigsby’s petition for post-conviction relief. We affirm the post-conviction court’s order upholding Bigsby’s sentence and denying him credit of 393 days on his Hamilton County sentence.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.

⁵ IC 35-50-1-2(d), in pertinent part provides, “If, after being arrested for one (1) crime, a person commits another crime: (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.”